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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,695	07/21/2003	David S. Benco	LUTZ 2 00217	6505
7590	10/14/2005		EXAMINER	
Richard J. Minnich Fay, Sharpe, Fagan, Minnich & McKee, LLP Seventh Floor 1100 Superior Avenue Cleveland, OH 44114			PHAN, HUY Q	
			ART UNIT	PAPER NUMBER
			2687	
DATE MAILED: 10/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/623,695	BENCO ET AL.
	Examiner	Art Unit
	Huy Q. Phan	2687

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 August 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 and 21 is/are rejected.
- 7) Claim(s) 19 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office Action is in response to Amendment filed on date: 08/26/2005.

Claims 1-21 are still pending.

Claim 21 is newly added.

### ***Response to Arguments***

2. Applicant's arguments, see remarks, filed on 08/26/2005, with respect to the rejection(s) of claim(s) 1-20 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Gentry (US-6,453,162).

Regarding claim 1, Gentry discloses a method for creating a temporary service plan for a subscriber of a wireless service provider when the subscriber currently has a normal service plan with the wireless service provider (col. 6, lines 32-55), the method including the steps of:

- a) receiving a request to create the temporary service plan from a user (col. 3, lines 6-12);
- b) retrieving the subscriber's normal service plan from a subscriber database (col. 4, line 20-col. 5, line 20);
- c) providing a change selection menu to the user in response to the request (col. 2, line 63-col. 3, line 5; also see col. 5, lines 43-67);
- d) modifying the normal service plan in conjunction with one or more user selections associated with the change selection menu to create the temporary service plan (col. 3, lines 1-16); and
- e) storing the temporary service plan in the subscriber database (col. 3, lines 1-16; also see col. 5, lines 43-67).

Regarding claim 2, Gentry discloses the method as set forth in claim 1, before step a), further including: f) receiving a request for service plan status from the user (see fig. 4 and description and col. 5, lines 43-67); and between steps b) and c), further including: g) reporting the normal service plan to the user (col. 4, line 20-col. 5, line 20).

Regarding claim 3, Gentry discloses the method as set forth in claim 1 wherein

the user is communicating using a mobile station associated with the subscriber's normal service plan (col. 4, line 20-col. 5, line 20 or other than "specified day" see col. 3, lines 10-12).

Regarding claim 4, Gentry discloses the method as set forth in claim 1, further including: verifying the user has authority associated with the subscriber to create the temporary service plan ("usercode and password" see col. 5, line 35-42).

Regarding claim 5, Gentry discloses the method as set forth in claim 1 wherein the request from the user is via a call to the wireless service provider from a telephone device (col. 1, line 55-col. 2, line 12).

Regarding claim 6, Gentry discloses the method as set forth in claim 5 wherein the change selection menu provided to the user includes an interactive audio portion (col. 1, line 55-col. 2, line 12).

Regarding claim 7, Gentry discloses the method as set forth in claim 5 wherein the change selection menu provided to the user includes an interactive graphical display portion (col. 2, line 63-col. 3, line 5; also see col. 5, lines 43-67).

Regarding claim 8, Gentry discloses the method as set forth in claim 1 wherein the change selection menu provided to the user includes a portion for selection between

a nationwide plan and a local plan (col. 3, lines 1-12 and col. 6, lines 32-55).

Regarding claim 9, Gentry discloses the method as set forth in claim 1 wherein the change selection menu provided to the user includes a portion for selection of a quantity of airtime associated with a predetermined period of calendar time (col. 3, lines 1-12 and col. 6, lines 32-55).

Regarding claim 10, Gentry discloses the method as set forth in claim 1 wherein the change selection menu provided to the user includes a portion for selection of a date for expiration of the temporary service plan (col. 3, lines 1-12 and col. 6, lines 32-55).

Regarding claim 11, Gentry discloses a method for modifying a service plan for a subscriber of a wireless service provider (col. 6, lines 32-55), the method including the steps:

- a) receiving a call from a user requesting status of the service plan (col. 2, line 63-col. 3, line 12; also see col. 5, lines 43-67), wherein the call is initiated by the user via a telephone device (col. 1, line 55-col. 2, line 12);
- b) retrieving the service plan from a subscriber database (col. 4, line 20-col. 5, line 20);
- c) reporting the service plan to the user in response to the status request (col. 4, line 20-col. 5, line 20);

- d) receiving a request to modify the service plan from the user (col. 3, lines 1-12 and col. 6, lines 43-67) via the telephone device (col. 1, line 55-col. 2, line 12);
- e) verifying the user has authority associated with the subscriber to modify the service plan ("usercode and password" see col. 5, line 35-42);
- f) providing a change selection menu to the user in response to the modification request (col. 2, line 63-col. 3, line 5; also see col. 5, lines 43-67);
- g) modifying the service plan in conjunction with one or more user selections associated with the change selection menu (col. 2, line 63-col. 3, line 5; also see col. 5, lines 43-67); and
- h) storing the modified service plan in the subscriber database (col. 3, lines 1-16; also see col. 5, lines 43-67).

Regarding claim 12, Gentry discloses the method as set forth in claim 11 wherein the telephone device is a mobile station (col. 4, lines 2-5) associated with the subscriber's service plan (col. 4, line 20-col. 5, line 20).

Regarding claim 13, Gentry discloses the method as set forth in claim 11 wherein the change selection menu provided to the user includes an interactive audio portion (col. 1, line 55-col. 2, line 12).

Regarding claim 14, Gentry discloses the method as set forth in claim 11 wherein the change selection menu provided to the user includes an interactive graphical display

portion (col. 2, line 63-col. 3, line 5; also see col. 5, lines 43-67).

Regarding claim 15, Gentry discloses the method as set forth in claim 11 wherein the change selection menu provided to the user includes a portion for selection between a nationwide plan and a local plan (col. 3, lines 10-12 and col. 6, lines 32-55).

Regarding claim 16, Gentry discloses the method as set forth in claim 11 wherein the change selection menu provided to the user includes a portion for selection of a quantity of airtime associated with a predetermined period of calendar time (col. 3, lines 10-12 and col. 6, lines 32-55).

Regarding claim 17, Gentry discloses the method as set forth in claim 11 wherein the change selection menu provided to the user includes a portion for selection of a date for extension and expiration of the service plan (col. 3, lines 10-12 and col. 6, lines 32-55).

Regarding claim 18, Gentry discloses a method for processing a call from a mobile station in a wireless network when the call is associated with a subscriber having a normal service plan with a wireless service provider associated with the wireless network (col. 1, line 55-col. 2, line 12), the method including the steps:

- a) receiving the call from the mobile station (col. 1, line 55-col. 2, line 12);

b) determining if the subscriber has a temporary service plan that is in effect with the wireless service provider (col. 3, lines 1-16 and col. 6, lines 32-55); and

c) if a temporary service plan is in effect, continuing to process the call and determining charges for the call according to the temporary service plan (col. 3, lines 1-16 and col. 6, lines 32-55).

Regarding claim 21, Gentry discloses a method for providing subscriber the method comprising:

service plan flexibility to a wireless service establishing a normal service plan having a normal plan start date and a normal plan end date (col. 3, lines 1-16 and col. 6, lines 32-55);

establishing a temporary service plan (col. 3, lines 1-16; also see col. 5, lines 43-67);

associating a temporary plan start time or date with the temporary service plan (col. 3, lines 1-16; also see col. 5, lines 43-67);

associating a temporary plan expiration time and/or date with the temporary service plan, wherein the temporary plan start time or date and expiration time or date are between the normal plan start and end dates (col. 3, lines 1-18 and col. 6, lines 32-55);

billing calls according to the temporary service plan if a current time is within a range associated with the temporary plan start time and/or date and the temporary plan expiration time and/or date (col. 3, lines 1-18 and col. 6, lines 32-55); and

billing calls according to the normal plan if the current time is outside the range associated with the temporary plan start time and/or date and the temporary plan expiration time and/or date (col. 3, lines 1-18 and col. 6, lines 32-55).

***Allowable Subject Matter***

4. Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reason for the indication of allowance:

Regarding claim 19, the prior art made of record and considered pertinent to the applicant's disclosure does not disclose nor fairly suggest the method further including:  
d) if a temporary service plan is not in effect, determining if the subscriber had a temporary service plan that recently expired; and e) if a temporary service plan recently expired, sending a message to the mobile station informing the user that a temporary service plan has recently expired, continuing to process the call, and determining charges for the call according to the normal service plan.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Q Phan whose telephone number is 571-272-7924. The examiner can normally be reached on 8AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kincaid G Lester can be reached on 571-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Huy Phan

  
**SONNY TRINH**  
**PRIMARY EXAMINER**

Examiner: Phan, Huy Q.      AU: 2687      Date: 10/07/2005